transfer or charge the land to a non-Malay without obtaining the approval of the Ruler-in-Council. In my opinion the purpose of the Malay Reservation Enactment is to protect the right and interest of a Malay in reservation land but when the registered owner is a non-Malay he can transfer or deal with his land with any other non-Malay without obtaining the approval of the Ruler-in-Council so long as his land is not transferred or charged to a Malay. Once the land is transferred or charged to a Malay then the restrictions imposed by the Enactment come into force.

For these reasons I hold that Jual Janji transfers are valid and I dismiss the application with costs.

Application dismissed.

Solicitors: *Wan Mustapha bin Haji Ali*; *Isahak bin Abdul Hamid & Co.*

KOW GUAN v. ARUNACHALAM CHETTIAR

[A.C.J. (Ismail Khan J.) October 20, 1962]

[Seremban — Civil Appeal No. 9 of 1960]

Landlord and Tenant — Standard rent — Increase of, above — Increase made without observing provisions of Control of Rent Ordinance, 1948, s.6(2) — Effect of such increase.

The question for determination was whether an increase of rent from $40 (standard rent) to $50 of controlled premises without determining the tenancy according to law as required by section 6(2) of the Control of Rent Ordinance, 1948 (now section 6(2), Control of Rent Ordinance, 1956) was valid.

Held: the onus was on the landlord to show that the existing tenancy was determined according to law prior to the increase of rent and he had failed to discharge that burden in this case. The increase was therefore an improper increase and the excess must be refunded.

Cases referred to:—

(1) *Annamalai Chettiar* v. *Yeoh Kee Tin* [1957] M.L.J. 9.

(2) *Robins* v. *National Trust Company* [1927] A.C. 515 at page 520.

CIVIL APPEAL.

Khoo Eng Chin for the appellant.

F. Keith Sellar for the respondent.

Ismail Khan J.: The appellant was the tenant of the rent controlled premises, No. 21 Lister Road, Kuala Pilah, of which the respondent is the landlord, and this is an appeal against an order for possession made in favour of the respondent by the President of the Sessions Court, Kuala Pilah. The respondent has also cross-appealed against the order made on the counterclaim.

Neither the ownership nor the tenancy of the premises has changed hands in recent years. The respondent is the registered proprietor and landlord since 14th February, 1951. The previous owners were the RM.P. firm of which the respondent was a partner. The appellant himself succeeded his father as contractual monthly tenant upon the latter's death in 1932. After being in arrears of rent from time to time the appellant was owing rents from February, 1959 to September, 1959, when a notice dated 10th November, 1959, was served on him by the solicitors for the respondent determining the tenancy on 31st December, 1959. Rent for these eight months was subsequently accepted by the respondent but rent tendered thereafter was refused. The appellant however declined to vacate the premises and in consequence the respondent commenced proceedings for ejectment in the Sessions Court at Kuala Pilah. In the statement of claim the rent of the premises was said to be $50 per month payable in arrear and possession was claimed on the ground that rent having been in arrear for eight months the tenancy had been duly determined by notice to quit.

The defence briefly was that the standard rent of $40 per month remained the maximum recoverable rent at all times by reason of the failure of the respondent's predecessors in title to observe the provisions of section 6(2) of the Control of Rent Ordinance, 1948, then in force (now contained in section 6(2) of the present Ordinance, 1956). The appellant contended that he was thus entitled to be credited with the accumulated excess payments made by him from March, 1948 to September, 1959, amounting to $1,390 so that no rent lawfully due was in arrear at the date of the service of the notice determining his tenancy. He further counterclaimed against the respondent for payment of the sum of $1,390.

The issue before the President therefore was whether the maximum recoverable rent was $40 or $50. The determination of this question turned on section 6(2) of the 1948 Ordinance which was in force when the rent was increased from $40 to $50 in March, 1948. After stating in sub-section (1) what were the permissible increases of rent, section 6, sub-section (2) went on to provide that "nothing in this section shall be deemed to relieve a landlord from the necessity of determining the tenancy according to law prior to increasing the rent."

The receipt issued by the RM.P. firm who were the landlord prior to 1951 showed that the rent paid in October, 1940 was $40 per month, thereby establishing the amount of standard rent. The same rent continued to be paid up to February, 1948. In March the rent was increased by 25% to $50. The pleadings having clearly raised the issue whether or not a notice was given to determine the tenancy prior to increasing the rent, I would observe that no evidence on this point was given by either of the two witnesses called by the respondent. On the other hand, the appellant was able to state categorically of his own personal knowledge as tenant as follows: "Rent for premises in February, 1948 was $40 and rent for March, 1948 was $50. No one gave me any notice to increase the rent of $40 to $50. The rent collector came and asked me to pay an increase of $10 in the rent

and he said if I refused to do so I will have to quit the house. It was sometime in April, 1948. When he asked for $50 rent I paid him the amount." Under cross-examination he repeated, "I did not receive a notice from the landlord to raise the rent in March, 1948."

In the teeth of such uncontradicted evidence, and contradiction was of course possible since the respondent was a partner in the RM.P. firm and would have taken over all the business papers of the firm relating to the premises upon becoming its sole proprietor and landlord, the President nevertheless held that "notice of increase of rent" had been given and gave judgment for the recovery of possession by the respondent and judgment on the counterclaim in favour of the appellant for the sum of $126 being excess of rent overpaid for twenty-one months from March, 1947 to November, 1949.

The judgment of the President was remarkable for oversight or misreading of the subsection in the Ordinance upon which hang both the claim and counterclaim. Section 6(2) in the clearest terms required that for the purpose of increasing the rent within the limits permitted the existing tenancy must be determined according to law, that is to say, by a valid notice to quit: thereafter a new tenancy was to replace the former at the new rent. However, the relevant portions of the grounds of judgment are as follows:—

" Having heard the evidence of the plaintiff and that for the defendant in this case as well as the submissions of counsel on both sides I found:—

(a) .....;

(b) .....;

(c) that notice of increase of rent on the premises was issued by inference (a) from the defendant's agreement to pay $50 rent per month from March 1948 instead of $40 per month as hitherto and (b) from the fact that the defendant being a business man, would have been prudent enough to understand that fact. Had he not agreed to the increase he would have kicked up a row at the time. Further Chettiars as a general rule are very, very careful with matters pertaining to money and that being so the probable inference was that the notice was served on the defendant at the right time, re—increase on the rent of the premises;

(d) that though defendant did adduce that no notice of increase in rent was served on him, this evidence was not corroborated by any one else's evidence, the defendant not having called any witness to support him. The burden of 'proof' lies with the defendant in this respect according to section 103 of the Evidence Ordinance, 1950: *Annamalai Chettiar* v. *Yeoh Kee Tin* [1];

(e) that according to the Rent Control Ordinance, 1948, the relevant section regarding increase of rent being section 6(1)(c) of the First Schedule thereto, the increased rent should have been $44 per month for that type of premises, when notice of increase was given;

(f) that the definition of 'premises' was amended subsequently in December 1949 and such amendment came into force on 10.12.49;

(g) that after this amendment the plaintiff was entitled to $50 rent per mensem for the said premises, as notice of increase had been served on the defendant, there being as 'proof' by the defendant that it was not served on him as explained in para. (d) above;

(h) that under the circumstances rent of $50 per month was lawful as from December, 1949.

(2) After taking all the above factors into consideration and thus believing the plaintiff's story to be more probable than that of the defendant especially because the former was corroborated while the latter was not on top of the fact that the defendant's demeanour was unimpressive, I gave judgment for the plaintiff on the claim as prayed for plus costs and ordered vacant possession within 2 months from date of judgment — on the counterclaim, however, I gave judgment for the defendant, that is the rent on the premises was to be $44 per month up to end of November, 1949, but $50 per mensem thereafter."

In the rest of the grounds of judgment running to over three pages, the President took gratuitously on himself the task of the respondent's counsel in arguing why the appellate court should on no account interfere with his decision. I think it was labour lost. In my opinion he clearly was wrong not only on questions of law, but also on questions of fact.

First, his repeated references to "notices of increase of rent" clearly show that he had entirely failed to appreciate the provisions of subsection (2) of section 6. Nowhere in the judgment was there a finding that any notice determining the tenancy had been given. A notice of increase of rent, whatever that may mean, was certainly not a notice validly determining a tenancy.

Secondly, the President misread and misunderstood *Annamalai Chettiar* v. *Yeoh Kee Tin* [1] when he said it was authority for the proposition that the burden of proving payment of excess of rent lay with the appellant. In that case the amount of standard rent alleged by the plaintiff had not been proved by him. In the present case the standard rent of $40 had been proved beyond any shadow of doubt, so that in order to show that he was entitled to $50 as the lawful rent, the onus was on the respondent to prove that the pre-existing tenancy had been determined according to law prior to increasing the rent. In any event, the respondent called no evidence whatsoever on the point, whereas the appellant did state positively that no notice had been given. The principles applicable would be as stated in *Robins* v. *National Trust Company* [2], "onus as a determining factor of the whole case can only arise if the tribunal finds the evidence pro and con so evenly balanced that it can come to no such conclusion. Then the onus will determine the matter. But if the tribunal after hearing and weighing the evidence comes to a determinate conclusion the onus has nothing to do with it and need not be further considered."

Thirdly, I am satisfied that the President's finding as to "notice of increase of rent" having been given was perverse and against clear evidence to the contrary. There is no law requiring corroboration of the appellant's evidence as the President seemed to think. He held on the other hand that there was corroboration of the respondent's story, when in truth, there was complete absence of any corroboration, because there could be none on a point as to which the evidence of the respondent was completely silent. The President discounted the appellant's

evidence because his demeanour was unimpressive. I think it was a poor way of bolstering up a weak case against him. Most important of all, the judgment of the President showed that what he termed inferences were nothing of the sort, because he drew his inferences from no proven facts. To say that the appellant's agreement to the increase, which was nothing more than an acquiescence in a demand, was sufficient to justify an inference of "notice of increase of rent" having been given was to beg the question. To say further that "chettiars as a general rule are so very careful with reference to money matters" that it should be inferred that they must have complied with the provisions of section 6(2), is to ascribe to every chettiar a degree of legal acumen which common experience does not acknowledge to be a truism. Had the President considered the evidence of the appellant with any care, he should have realised, from the known facts, that the appellant's admission of a demand for increase of rent by the RM.P. rent collector was the most significant admission in his favour because a rent collector as such has no authority to give any notice determining a tenancy and because landlords whose place of business was in Malacca must necessarily send any such notice in writing to a tenant of premises in Kuala Pilah. That would give rise again to a reasonable and probable inference that if chettiars are naturally prudent persons, punctiliously observing the law, they must have at the same time realised that the notice under section 6(2) being necessary for a lawful increase of rent would have to be carefully preserved and therefore have been available for production. Non-production of the notice should then lead to an adverse inference under section 114 of the Evidence Ordinance.

Fourthly, it is clear that, when the rent was raised in March, 1948, the permissible increase under the First Schedule to the 1948 Ordinance was only 10%, because no provision was made for "premises used wholly or partly for purposes other than human habitation." An increase of rent beyond the lawful limits by itself affords the clearest intrinsic evidence that the RM.P. firm as the then landlords either did not know or did not care to observe the provisions of section 6(2). When the Control of Rent (Amendment) Ordinance, 1949, came into force on 9th December, 1949, it legitimised the increase of rent of the premises in question in this case to $50 but there was absolutely no evidence that any notice under section 6(2) was then given and it is obvious that any notice served previously for an unauthorised increase of rent could not possibly have been put to use more than eighteen months later. In the result, the respondent had been overpaid the sum of $10 a month from February, 1951 to September, 1959, a total of $1,040.

There being no arrears of rent lawfully due under section 12(1)(a) of the Ordinance currently in force when notice to quit was given, the respondent's claim to possession must fail.

For the above reasons I allow the appeal and dismiss the cross-appeal. The order of the President is wholly set aside. The claim must be dismissed and judgment given for the appellant on the counterclaim for the sum of $1,040 being rent overpaid to the respondent. Any double rent paid has to be refunded. The appellant will have the costs here to be taxed and costs in the Court below according to scale.

Appeal allowed.

Solicitors: *George & Khoo; Sault, Keith Sellar & Co.*

NG WAN SIEW v. TEOH SIN

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) December 7, 1962]

[K.L. — F.M. Civil Appeal No. 46 of 1962]

Administration of Estate — Question whether appellant a natural or adopted son — Parol and documentary evidence — Weight to be attached — Admission into evidence of statements and documents — When to be contested — Whether proceedings should be commenced by Writ or Originating Summons.

Practice and Procedure — Writ or Originating Summons — When to commence by.

The appellant claimed that certain documents and oral evidence which the trial judge had admitted into the record in deciding the question whether he was the natural or the adopted son of an intestate should not have been admitted.

Held: the objections should have been raised at the trial and not on appeal.

Per curiam: When it is known that there is going to be a conflict of testimony and a necessity for taking parol evidence the proceedings should be commenced by Writ.

COURT OF APPEAL.

W. S. Chen for the appellant.

S. D. K. Peddie for the respondent.

Thomson C.J. (delivering oral judgment): This appellant claims to be the natural son of a man called Ng Seng Kee who died intestate on 24th May, 1944, leaving two widows and the appellant and as such entitled to participate in the succession to his father's estate.

His mother who is the administratrix of the estate and the respondent to this appeal claims that he is not a natural son but an adopted son.

Mr. Justice Suffian heard the case and came to the conclusion that the appellant was an adopted son. Against that decision the appellant has now appealed.

Apart from documents, to which I shall come in a moment, there was a great deal of parol evidence which was virtually uncontradicted by other parol evidence to the effect that the appellant was an adopted son. In the first place there was the evidence of his alleged mother, the respondent, who after all is the person best